IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 496 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE C.K.BUCH

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?	
5	Whether it is to be circulated to the civil judge ?	

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VINODKUMAR DALPATRAM THAKKAR & 4 - Applicant(s)

Versus

THE STATE OF GUJARAT - Respondent(s)

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Appearance :

MR VIRAT G POPAT for Petitioner No(s).: 1,2,3,4,5.
MR LR PUJARI, LD.APP for Respondent No(s).: 1.

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CORAM : HONOURABLE MR.JUSTICE C.K.BUCH

Date : 17/08/2005

ORAL JUDGMENT

1. Heard Mr.Virat G. Popat, learned counsel appearing for the petitioners and Mr.L.R. Pujari,

ld.APP, appearing on behalf of the respondent-State.

2. Rule. The formal service of Rule is waived by Mr.L.R. Pujari, ld.APP, appearing on behalf of the respondent-State. On consent, the Rule is fixed forthwith.

3.1 It is submitted by Mr.V.G. Popat that even if the alleged dying declaration is taken as it is, no offence punishable under Section 306 of the Indian Penal Code is made out because there is no element of either torture or cruelty emerging from the statement of the deceased whereby she has narrated the cause for committing suicide.

3.2 Undisputedly, the petitioner no.1-husband of the deceased had left house under some social-family circumstances prior to three months of the incident in question and had started residing with his sister i.e. petitioner no.2 herein. It is the allegation that the petitioner nos.2 and 3 were nagging the deceased probably because the husband of the deceased was compelled to leave the house prior to three months. The other two accused

persons named in the dying declaration are resident of a different village. It is very likely that they might have criticised the conduct of the deceased; but that by itself cannot be equated with the ingredients which are required to be established to prove the guilt for the offence punishable under Section 306 of the Indian Penal Code. The Court is supposed to see that the facts placed by the prosecution are able ot establish abetment as per the scheme of Section 107 of the Indian Penal Code and whether it is possible to prove abetment or not while dealing with a case of such nature.

4. Mr.V.G. Popat, learned counsel appearing for the petitioners, has placed reliance on the decision of the Apex Court in the case of ***Mahendra Singh and another v. State of Madhya Pradesh, reported in 1996 Cr.L.J. 894***. In this cited decision, the prosecution was placing reliance on the dying declaration and the translated version of the dying declaration is reproduced verbatim in the said decision of the Apex Court. It would be beneficial to quote the relevant part of the said dying declaration recorded in the cited decision, which reads as under :

> *"My mother-in-law and husband and sister-in-law (husband's elder brother's wife) harassed me. They beat me and abused me. My husband Mahendra wants to marry a second time. He has illicit connections with my sister-in-law. Because of these reasons and being harassed I want to die by burning."*

5. In the cited decision of Mahendra Singh (supra), while evaluating the dying declaration, the Apex Court has observed that:

> *"... Abetment has been has been defined under Section 107 IPC to mean that a person abets the doing of a thing who firstly instigates any person to do a thing, or secondly, engages with one or more other person or persons in any conspiracy for doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing, or thirdly, intentionally aids by any act or illegal omission, the doing of that thing. Neither of the ingredients of abetment are*

attracted on the statement of the deceased. The conviction of the appellants under Section 306 IPC merely on allegation of harassment to the deceased is not sustainable. The appellants deserve to be acquitted of the charge."

5. It is true that in the cited decision the accused were tried on merit and here in the instant case, the accused are praying for discharge. The crucial question would be whether this type of accused should be asked to face trial or they should be discharged. The answer would be that a person should not be compelled to face prosecution for the sake of facing it or merely because the prosecution intends to prosecute the accused under a particular grave charge. In the present case, the police had not charged the accused for the offence punishable under Section 306 of the Indian Penal Code but now the prosecution wants to add this charge on the strength of the dying declaration. I am afraid whether the charge punishable under Section 498(A) of the Indian Penal Code also would sustain or not. But ultimately this would depend upon the oral evidence during trial.

6. In view of above set of facts emerging from record, it appears that the learned Judge has committed a grave error in holding that the charge of Section 306 r/w. Section 114 of the Indian Penal Code requires to be added and the accused should be directed to face that charge. The Court has already stayed the non-bailable warrant issued by the ld.JMFC, Deesa and obviously, therefore, that part of the impugned order shall also be turned down.

7. With above observations, the present Revision Application is hereby allowed. The order under challenge passed by the ld.JMFC, Deesa, below application Exh.6 in Criminal Case No.2324 of 1989 is hereby quashed and set aside. Now there shall not be any formal charge for the offence punishable under Section 306 of the Indian Penal Code. The non-bailable warrant issued by the ld.JMFC, Deesa is hereby cancelled.

Rule is made absolute accordingly. D.S.

(C.K. Buch, J)

Aakar